State of California California Natural Resources Agency

Memorandum

Date: MAY 0 6 2011

To: Joe Grindstaff
Executive Officer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

From: Dale K. Hoffman-Floerke
Deputy Director
Department of Water Resources

Subject: Comments on Third Staff Draft Delta Plan dated April 22, 2011

This memorandum transmits the Department of Water Resources (Department) staff comments of the Third Staff Draft of the Delta Plan released by the Delta Stewardship Council (DSC) on April 22, 2011.

This third staff draft of the Delta Plan is improved in readability from the previous versions. This version forms a more complete picture of the Delta Plan in that it contains not only policies and recommendations but also problem statements and performance measures.

The Department's comments on the third staff draft are provided in the attached document and are organized by chapter, section, page number and line number. Staff has also provided proposed language changes to the plan where appropriate. The Department will also provide comments on the fourth staff draft and the subsequent versions of the public drafts of the Delta Plan as they become available.

If you or your staff have any questions regarding the Department's comments, please contact me at (916) 653-8045 or Robert Yeadon, Delta Regional Coordinator at (916) 651-7012.

Dale K. Hoffman-Floerke
Deputy Director

Attachment

cc: Kamyar Guivetchi
Art Hinojosa
Kathy Kelly

Staff Comments on Third Staff Draft Delta Plan
Dated 22 April 2011
Department of Water Resources

The following review is provided by staff of the Department of Water Resources (Department) on the Third Staff Draft Delta Plan released to the public on 22 April 2011 by the Delta Stewardship Council (DSC.) This third staff draft of the Delta Plan is improved in readability from the previous versions. This version forms a more complete picture of the Delta Plan in that it contains not only policies and recommendations but also problem statements and performance measures. The Department plans to provide additional comments on the fourth staff draft when it becomes available.

Chapter 1 The Delta Plan

General Comments

Consistent with California Water Code (CWC) sections 85300(a) and 85067, the Delta Plan should consider each of the strategies and actions identified in the Delta Vision Strategic Plan and the Delta Vision Implementation Report. Also, to be consistent with CWC section 85211, the Delta Plan should include quantitative or otherwise measurable assessments that will enable the DSC to track progress in meeting the objectives of the Delta Plan. Numerous Delta Plan performance measures lack measurable assessments that would enable the DSC to track progress in meeting explicit objectives.

Page 8, lines 1 & 2

Mention should be made here of the Delta Vision process also.

Page 8, lines 29 - 44

The text should mention the Delta Protection Commission's (DPC) economic sustainability plan and the Delta Conservancy's strategic plan in this section.

The 2012 Delta Plan

Page 9, line 18

The phrase "water exports from" should be placed after "reliance on".

Page 9, lines 39 - 40

There are many locally owned and operated water storage reservoirs upstream of the Delta which contribute to the issues described here. These include Pine Flat,

Comanche, New Don Pedro, New Hogan, Hetch Hetchy, Cherry Valley, McClure, New Bullards Bar to name a few.

Current Conditions

Page 9, line 38

The plan states there are numerous pipes and canals that carry water from east to west in isolation. The Mokelumne Aqueduct is one such pipe. Please provide examples of the others.

Page 10, lines 4 – 6

California also must rely on “large systems of storage and conveyance” because most of the precipitation falls in the northern part of the state, while most of the population resides in the southern part. The text should mention this.

Page 10, line 11

The plan states that reduced and variable fresh water flowing into the Delta is degrading water quality and threatening survival of multiple native fish species. Variable fresh water flowing into the Delta is a natural part of the Delta’s ecosystem and is not a threat to native fish species. The current variability of the Delta’s fresh water supply is less than historic variability. This sentence should be revised to either remove the word ‘variable’ or be modified to indicate that it is the modified hydrographthat may threaten survival of multiple native fish species, not the variability itself.

Page 10, line 32

The plan states that the State Water Resources Control Board (State Board) has no clear authority to manage groundwater. This should be revised to more accurately reflect California groundwater policy. The Porter Cologne Act authorizes the State Board to manage discharges to groundwater that may impact water quality. Note that CWC sections 2100-2101 authorize the State Board to manage groundwater pumping.

Page 10, line 37

After “catastrophic” add “levee.”

Page 10, line 38

Please add “seismic events” to the list provided here.

Page 10, lines 42 - 43

The statement that the cost of maintaining or improving levees is sometimes more than the value of the use of the land is not quite accurate. Levee maintenance on an annual basis can be just a few thousand dollars per mile for some islands. For other islands, even $1million per mile for levee improvement may not exceed the value of the land on the island.

What the Delta Plan Will Achieve by 2100

Page 11, lines 4 - 5

The plan indicates that by 2100, changes will result from seismicity. This sentence should be modified to state that changes may or are likely to result from seismicity.

Page 12, lines 3 - 4

The plan states that California will have a fully integrated, "real time system for tracking and evaluating water use and water quality" for both surface water and groundwater supplies but lacks specifics on how that will be achieved. There are significant cost implications associated with real time tracking of water resources that should be discussed in the Finance Framework.

Page 12, lines 11 - 12

The Plan states that "urban per capita water use is reduced by 50 percent or more statewide." From what base year is the 50 percent reduction made – is that from current conditions?

Phasing of the Delta Plan

Page 13, line 10 and line 17

Please add "and improvements" after "repairs" on both of these lines.

Page 13, line 17

A range of sea level rises should be given and a source should be cited. Also, the phrase "sea level rise of more than 55 inches" is contradicted by Table 1-1 on Page 11 of this draft report. These numbers should be consistent.

Page 14, Figure 1-1

There have been no State Water Project (SWP) or Central Valley Project (CVP) deliveries to the Coachella and Imperial Valleys, as shown on the map. There have been water exchanges between Metropolitan Water district of Southern California (MWDSC) and Coachella Valley Water District (CVWD), which has allowed the latter to receive indirectly some of its SWP entitlement. The Central Coast area shown receiving Delta water is way too large.

Page 15, line 2

Delete the word "discretionary" as that term has a specific meaning in CEQA, and replace it with "advisory" or "recommended."

Chapter 2 Science and Adaptive Management for a Changing Delta

Effective Governance

Page 31, lines 1 - 9

Mention should be made here of the importance of inter-governmental communication and coordination of actions for effective governance in the Delta, its watershed, and water export service area. Federal, State, and local government agencies should not work at cross-purposes to each other. Businesses and residents of the study area should not be subject to conflicting governmental laws, rules, and regulations.

Chapter 3 Governance: Implementation of the Delta Plan

General Comments

The Department recommends the Delta Plan include the figures referred to in CWC section 85057.5 7(c), since the definition of a "covered action" in some instances is dependent on whether the work is in the areas shown in these figures. This includes Figure 3.1 of Chapter 3: *Draft Conservation Strategy of the Bay Delta Conservation Plan*, August 3, 2009 and Figures 1 to 5, inclusive, of the latest revision of the *Final Draft Initial Assessment of Dual Delta Water Conveyance Report*.

Will covered actions include entire programs such as the Department's long standing Special Flood Control Projects program for Delta levees or will each project need certification? The Department recommends language to include certification of programs as covered actions.

The Department recommends not using language requiring a "guarantee" of continuing legal and financial responsibility or a "guarantee" of sufficient funds. There is no standard for the guarantee, and it is difficult to provide such guarantees. All public agencies (state, federal, and local) are subject to annual budget cycles and rarely can make binding long-term commitments to programs after capital improvements. This becomes especially problematic for bond funds. There also are tax implications associated establishing endowments using bond funds.

Covered Actions are a Core Responsibility

Page 35, lines 11 - 16

The appeal process as it relates to covered actions is discussed here. It appears that the appeal process could take 150 days before a determination is made by the DSC. The Department is concerned that this could delay critical water supply or levee repair projects and result in an entire construction period being missed. This delay would thereby increase risk to human health and safety. In addition to the early consultation discussed (page 37, line 25), has the DSC contemplated means to mitigate such delays such as allowing a concurrent review during the CEQA process?

Page 35, line 12

Please note that according to section CWC section 85225.10 - "Any person may appeal a certificate of consistency within 30 days to the Council, alleging that…"

Page 35, lines 20 - 21

The text implies that there is an impact threshold for a "covered action." This concept should be described more fully. The DSC should consider a list of types of projects that are not considered to "have an significant effect on the Delta," much like the CEQA Guidelines' list of categorically exempt projects (with appropriate exceptions).

Page 35, lines 28 - 32

The regulatory policies in the draft plan need careful consideration in that some of these policies could constitute a temporary or permanent regulatory taking of property by prohibiting actions that interfere with future State actions.

Page 37, lines 7 - 10

The text implies that if the plan does not apply to a "covered action," then no consistency requirement exists. Is that a correct interpretation?

Page 37, lines 11 - 16

See comments for page 35, lines 20 - 21 above.

Page 37, line 22

Between the word "Project" and the word "and" please add "and related mitigation activities such as South Delta tidal barriers and adjoining boat ramps."

Page 37, line 23

Please change "reclamation district" to "state or local levee maintaining agency" in this sentence.

Page 38, Figure 3.1

The 4th box on left should specify "local or state" agency.

Certifications of Consistency

Page 39, lines 4 - 5

Compared to earlier versions, this third staff draft has an improved explanation of covered actions and how the process will be administered. The DSC proposes to develop a check list which agencies would be able to use to facilitate the process. The DSC has also proposed to develop a list of the types of projects that would be covered actions. It would be helpful to have these available for the fourth staff draft so that reviewing agencies could have a more complete picture of what types of projects would be included as covered actions.

G P1, page 39, line 36

How would the application of best available science be made on covered actions that were not scientifically based? For example, how would best available science be applied to a zoning change? Also, who would make the determination of what constitutes best available science if the scientists disagree? How would best available science be applied to a scientific study such as the Department's carbon sequestration

studies? Would the study design be questioned by other scientists? The DSC should include these in the discussion described in No. 2 (line 36.)

G P1, page 39, lines 38 - 41

Demonstration of managerial and financial capacity to implement the covered action could prove problematic for some agencies. Large-scale projects rarely have 100% funding approved before starting implementation.

G P1, page 40, line 17

The Department recommends striking the language requiring release of "all" information developed related to adaptive management of large-scale ecosystem restoration and water management covered actions. Some data may be sensitive or critical for security reasons or simply need additional validation prior to release to the public.

Page 39, line 42 - 45

The plan should provide a list of the types of laws that they are interested in having discussed. The DSC is probably not interested in prevailing wage laws, workers compensation law, and other similar laws.

Page 40, lines 1 - 3

The plan needs to define "Large-scale ecosystem and water management covered actions" to make this policy more clear.

<u>Changing the Delta Plan</u>

Page 40, line 28

BDCP is better characterized as an "effort" rather than a "project" at this point.

Page 40, lines 32 - 33

Please clarify the language in the last sentence of this paragraph where it states that completion and full implementation of the BDCP is not equivalent to satisfying the Act.

Chapter 4 A More Reliable Water Supply for California

Page 44, Inset

In the section beginning "Inherent in the coequal goals…" there appears to be an orphan phrase beginning with "Missing self-sufficiency…" after line (f).

General Comments

The DSC believes that additional local and regional conservation and water supply development is needed to improve regional self-reliance in order to reduce reliance on the Delta and achieve the coequal goals. To help/encourage the attainment of regional self-reliance and reduced reliance on the Delta, the Plan provides three water resource (WR) policies. The policies, however, will only apply as regulatory policies to the extent that:

- A covered action involving the export of water out of the Delta, or involving the transfer of water through the Delta, is inconsistent with the Delta Plan if the need for that covered action is significantly caused by a recipient region's failure to comply with policies WR P1, WR P2, and/or WR P3.

- A covered action involving the use of water in part or in whole in the Delta is inconsistent with the Delta Plan if the need for that covered action is significantly caused by the water using region's failure to comply with policies WR P1, WR P2, and/or WR P3.

The WR policies, in turn, call for a Water Sustainability Element to be included in Urban Water Management Plans and/or Agricultural Management Plans (WR P1), water suppliers who use water from the Delta to meet, at a minimum, the "20 X 2020" standards and timelines (WR P2), and that rate structures be developed that encourages and supports water conservation (WR P3).

From a general standpoint, WR P1, WR P2 and WR P3, as recommendations, are reasonable. Regional and local water suppliers should be looking at what steps can be done and should be done to become more self-reliant in the long-term.

However, making a covered action involving the export of water out of the Delta, or involving a transfer, inconsistent with the Plan if it is determined that the recipient failed to comply with policies WR P1, WR P2, and WR P3 raises the following questions/concerns:

1. What does it mean to become more self-reliant and less dependent on water from the Delta? Must a water supplier plan for and take actions that reduce their

need for Delta water from what they have historically been getting? Or, alternatively, is it sufficient that, taking increased demands into account, the water supplier does not plan for increased water from the Delta to meet its future needs? Hypothetically, it is possible for a particular region or water supplier that only the latter is feasible. Is this acceptable and in compliance with the policies?

2. If a local water supplier that receives water from the SWP does not comply with the WR policies, does the entire SWP operation become inconsistent with the Delta Plan, or is it inconsistent to the extent that water is supplied to the particular water supplier?

3. Related to issue 2 above, this policy essentially puts the SWP at risk of being considered inconsistent with the Delta Plan on account of the actions, or inactions, of agencies outside DWR's control.

The Department encourages the Council to work on developing more of an incentive-based approach to further the policy of regional self-reliance and decreased dependence on the Delta.

A discussion of the water transfers program should be provided in this section. This is an important program that would benefit the Delta and result in a more reliable water supply for California. The water transfer program consists of laws, measures, facilities, and administrative actions to encourage, promote, and facilitate water transfers, both short-term and long-term, between willing buyers and sellers in California. More water transfers in California could reduce certain regions' reliance on water exports from the Delta. As DWR's *California Water Plan Update 2009* describes it on Page 7-8:

> For receiving areas, water transfers have the potential to improve economic stability and environmental conditions that would otherwise deteriorate with water scarcity. Sellers can use the compensation from transfers to fund beneficial activities …

Page 45, lines 19 and 20

The Department recommends the addition of the following paragraph between lines 19 and 20:

"One part of the modifications that have taken place in the subsided Delta to shape it into what it is today was the construction of levees around each of the islands and tracts. These levees serve many purposes. In regards to water supply, the levees limit the land area that is subject to tidal flooding and constrains the tide to the volume contained within the levee system. By reducing the volume of the Delta that is subject

to tidal flux, the levees limit salt water intrusion, limit tidal mixing, and preserve fresh river water for other purposes, including export to areas of the State that are in need of additional fresh water supply."

Page 45, line 32

The Department recommends the insertion of a new subheading and text as follows:

Preserve Delta Reliability in Water Delivery

"The Delta levee system separates the now subsided lands (once occupied by peat soils) from the surrounding water. The subsided area below the water level on each island represents a certain volume of empty space. The volume of this empty space, in some references called anthropogenic accommodation space (AAS), would be subject to flooding by tidal action. If this space were flooded, the tidal volume would increase and the Delta would turn brackish unless flushed by large volumes of fresh water. The volume of fresh water necessary to flush saltwater from the Delta without the levees in place could exceed the volume of project storage on an annual basis. Because the levee system functions to limit saltwater intrusion, the State and federal water system is able to move export flows south of the Delta for beneficial uses."

The Department also recommends the addition of the following problem statement and policy:

Problem Statement

"Delta islands contain significant volumes of AAS that could impact the ability of the State and federal water project to deliver exports south of the Delta for beneficial use."

"Policy WR PX To limit tidal flux volume and preserve fresh water, the levee system should be maintained for its many purposes, including water supply reliability."

<u>Improve Regional Water Self-Reliance</u>

Page 46, lines 4 - 18

An important example of "local and regional water supply development" that should be mentioned here is improved forestry management. According to a recent statement by a California Forestry Association official, California could increase our

State's water supply by 1-to-3 Million Acre-Feet per year (through delayed runoff and ground water recharge) by improving the management of our public forests.
Page 46, line 6

Please add "emulates the natural system where water is reused many times as part of the water cycle. Specifically, it…" after recycled water.

Page 46, line 7

Please add "additional" between "several" and "times."

Page 46, lines 8 - 11

Is there money allocated for developing/expanding facilities to treat groundwater and for desalinization? These are typically not efficient or cost-effective options with available technology. Focus should be to better control discharges that contaminate water and enforce proper waste disposal regulations. Improved storage is also a good option to focus on because it is a one-time cost, as opposed to an ongoing treatment cost.

Page 46, line 29

Please verify and provide a reference for the statement that over $2 billion in state bond funds have been made available.

Page 46, 4th footnote

The fourth footnote states that, "An Integrated Regional Water Management Plan (IRWMP) must be approved by DWR to receive bond funding for implementation of identified projects." However, DWR does not approve IRWMPs. To be eligible for bond funding, an IRWMP, approved by the local or regional agencies, must be in place.

Page 47, line 36

Please insert "sustaining or" just before the word "improvement."

WR P1, page 47, lines 23 - 29

Some urban and agricultural water suppliers which deliver water from the Delta or diverted from streams flowing into the Delta may be too small to produce the required water management plan. Such small suppliers should be allowed to form regional water supply associations, which would cooperatively produce a water management plan for their region.

WR P1, Page 47, lines 30 - 33

Please clarify the planning period and criteria for the possibility of interruption of Delta water supply.

WR P1, page 47, line 34 to Page 48, line 2

The text should make clear that not all of the seven listed programs or projects will be feasible within the service area of each water supplier, and that other programs or projects to increase local and regional water supplies, such as improved forestry management, may be feasible, and worthy of inclusion in the management plan.

Page 48, lines 3 - 11

Evaluation of Regional Water Balance

The text implies each region has to demonstrate a water balance. This could have the effect of eliminating all Delta diversions. A definition for "water balance" is necessary. (See below.)

This section requires regions to assess long term water supply sustainability by demonstrating a positive projected regional water balance. Regions showing an imbalance must demonstrate activities through their IRWMP to bring their region into balance. Asking regions to quantify their regional water balances is much needed step that is missing in many IRWMPs. However, there are a couple of problems with how this section introduces the concept of regional water balances that contradict the strategy developed for the California Water Plan. These problems are described in more detail below and are followed by the Department's recommend changes.

1) Regional water imbalance - The first problem is introducing the term water imbalance. This leads to the conclusion that regions should consider a single view of the future to quantify their regional water balance and avoid a future that shows a mismatch between water demands and water supplies. In contrast, the Water Plan has introduced the concept that the future is inherently uncertain. Future population growth, land use changes, regulatory requirements, and climate change will all affect how regions respond. Beginning with Update 2005, the Water Plan has introduced the concept of scenarios to consider these uncertainties to test the robustness of potential water management strategies. In Update 2009, the Department used 3 growth related scenarios and 12 future climate scenarios to identify a range of future water demands for California's 10 hydrologic regions.

2) Water Supply Sustainability - The second problem with the section is that it links the term water supply sustainability narrowly to meeting future water demands without considering the broader usage of the term water sustainability to include environmental, economic, and social equity factors. Matching future water demands strictly by looking at water supply could likely prove to be an unsustainable course of action without considering the broader use of the term water sustainability. As part of Update 2013, the Department is working through our open and collaborative process to develop an analytical framework to help regions to quantify water sustainability indicators. The Water Plan seeks to quantify how regional water management responses can meet multiple objectives including supply reliability, provide environmental benefits, protect against drought, improve water quality, and many others.

The Department recommends that the plan introduce the need to quantify regional water balances, but not use the water balances themselves as the mechanism to prompt water management actions. Also, the Department does not recommend the use of the term water supply sustainability as a narrow concept focusing on water supply. Instead regions should be encouraged to evaluate potential water management actions that are robust across multiple future scenarios that meet multiple water management objectives including water sustainability in the broad sense.

WR P1, page 48, lines 3 – 11

This provision recommends using Integrated Regional Water Management Plans as a mechanism for identifying steps to bring the “hydrologic region” into balance. Most IRWMPs that have been developed and/or approved, however, cover a geographical area that is only a portion of a given hydrologic region. To recommend these IRWMPs be responsible for identifying steps to bring the entire hydrologic region into balance may be unreasonable.

WR P1, page 48, line 6

The Department recommends using the term ‘demand exceeds supply’ rather than ‘the region lacks balance’.

WR P1 page 48, lines 12 & 13

The Department is not clear on the term “Sustainable Water Rate Structure.” A more correct term is a “conservation-oriented water rate structure” or “water rates which encourage conservation.” Also, “sustainably” should be removed from “Evaluate the degree to which the supplier’s current rate structure sustainably encourages and supports water conservation.” (How can water conservation not be sustainable?)

WR P1, page 48, lines 15 - 23 Option A

See Comments above regarding IRWMPs to include a provision for covering "region" and DWR approving IRWMPs.

WR P1, page 48, lines 21 - 23

The DSC should note that determining compliance under Option A would require accurate data from the regulated agency and lengthy analysis on the part of the Department. There are considerable costs associated with this option.

WR P3, page 48, lines 36 & 37

The word "sustainably" should be removed from this statement "rate structure that sustainably encourages and supports water conservation".

Page 49, line 2

Consider adding the following recommendation:

"WR RX Water exporters from the Delta or Delta watershed should support funding from multiple sources for maintaining, repairing, restoring and, in some cases relocation of delta levees as a primary means to preserve fresh water quality in this estuary."

<u>Delta Instream Flow Criteria and the Setting of Flows</u>

Page 49, Lines 22 – 26

The plan states, "*[o]ften, the decisions needed to protect the State's interests in ecosystem protection and water supply reliability have been blocked by battles among competing interests. The resulting downward spiral in which the state now finds itself, with native fish populations crashing and reduced reliability of water exports from the Delta, is unsustainable.*"

This statement does not accurately reflect what has occurred. Over the years, the State Water Board has made several decisions, in the forms of water quality control plans and water rights orders implementing those plans, that were based on the balancing of all the competing interests and making determinations on what the reasonable levels of protection were for each beneficial use. The decisions were based on the current understanding of the needs of each beneficial use and what was in the public interest at the time.

Based on our current understanding of the Delta, we may find the past decisions inadequate and not currently in the public interest, but it is incorrect to state that those decisions were not made.

Page 49, lines 27 – 35

The Plan states: "*If the coequal goals are to be achieved, it is essential that the State Water Resources Control Board complete the work to set flow objectives and criteria for the Delta and the major tributary streams in the Delta watershed. The state cannot afford further delay. It is impossible for the state to plan and build a reliable water system where future ecosystem flow requirements are not known. This is true everywhere in the State but especially true in the Delta. Water suppliers cannot commit to funding new projects and making effective decisions about billions of dollars of infrastructure investments until the State Water Resources Control Board process is complete. Until the flow issue is resolved, every action that potentially increases the amount of water diverted from or moved through the Delta is vulnerable to legal challenge over the question of whether there are sufficient flows to protect and restore the environment*."

Put simply, the flow issue will never be (and perhaps never should be) resolved. The State Water Board, in its water quality control planning process, will develop water quality objectives that, based on the current understanding, will attain the highest reasonable protection of the Bay-Delta's beneficial uses. As time progresses and circumstances and understanding change, what is protective and what is reasonable will change; and, thus, the objectives should change as well.

The State Water Board's water quality control planning process already takes this possibility of change into account in that there is an already in-place review process that takes place every three years. (See CWC sections 13170; 33 USC section 1313(c)(1).) During the review, the State Water Board investigates and considers any new information relevant to setting and implementing water quality objectives, and makes any necessary changes. While this program of consistent updates does not allow for much certainty, the uncertainty it creates is tempered by the fact that in whatever changes the State Water Board makes, those changes must be reasonable.

In sum, the Council's focus on getting the flow issue resolved both misunderstands the water quality control planning process and undermines the fact that water quality objectives should change as circumstances and public interest change.

Page 49, lines 36 - 45

The text states: "*The State Water Resources Control Board has set a work plan and schedule for developing flow standards for the Delta and its watershed. The first step*

was taken in 2010, when the State Water Resources Control Board completed its report on the Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (State Water Resources Control Board 2010a)."

The above statement in incorrect in stating that the Flow Criteria Report was the first step in the State Water Board's work plan and schedule for reviewing and potentially modifying the current water quality objectives. Actually, the State Water Board committed to the process review and potentially modify the current water quality control plan for the Delta (Bay-Delta Plan) in 2008 and began the process in early 2009. (See Resolution 2009-0065.)

WR P4, page 50, Lines 10 – 29

General Comments

In the first bullet, the June 2, 2014 date to both adopt and implement flow objectives for the Delta is ambitious. Conducting the necessary balancing to determine, (1) what the highest reasonable level of protection is for various beneficial uses, and (2) who should be responsible for implementing that protection is a complicated and time-consuming process. It is also a process that should not be short-cut or rushed. If the State Water Board attempts to meet the proposed deadline, the end result may be based more on what is easily accomplished in such a short time frame and not what is most reasonable. The DSC should consider eliminating the implementation language from the policy and focus more on having the new objectives adopted.

All of the options for Council consideration listed in lines 21 to 29 to some degree constrain covered actions and future covered actions until the State Water Board adopts and implements revised water quality objectives. The Department questions this approach. The DSC should consider revising WR P4 to a recommendation.

This is especially true for the inclusion of option A, which would use the Flow Criteria Report to determine consistency of covered actions. This report was an unbalanced look at what the Delta ecosystem needed and did not consider the impacts or needs of any other beneficial use. This approach does not harmonize with the policy of "coequal goals." Just as the Council would not and should not consider using a report describing the full needs of export users as the baseline to determine consistency, the Council, for the very same reasons, should not use the report.

Option B would find inconsistent any action that could increase water diversion or storage from the Delta until the Board developed new flow objectives. First, the consequence ignores the fact that any new diversion for use or storage or any new point of diversion would have to be approved by the State Water Board. As such, the Board could and likely would include terms and conditions in any permit that would

require the action to comply with relevant objectives and any changes to those objectives. Also, the State Water Board would not likely make any decision on such requests until it has completed its water quality control planning process.

Page 50, lines 11-29

The Sacramento-San Joaquin Delta Reform Act of 2009 requires the State Board to develop flow criteria to meet the coequal goals, but may not supersede federal requirements. In 1995 the Federal Register promulgated salinity (X2) requirements into the Code of Federal Regulations (CFR) Title 40 Part 131.37. These federal X2 requirements should be addressed in the Delta Plan. If the State Board's study indicates different flows are needed to meet the coequal goals, then the Delta Plan need may need to propose a procedure to come into compliance with federal law.

Page 50, lines 17 - 19

Please clarify what is meant by the existing Delta flow objectives. Are these the criteria established by the State Board in 2010.

Page 50, lines 21 - 23

The State Board's criteria report is not designed to be enforced as it does not evaluate the impact of the proposal upon the other public trust resources. This report only evaluates the effects upon fish and the ecosystem as the title states. Using this report to evaluate covered actions will not balance the co-equal goals of water supply and the ecosystem improvement.

Page 50, lines 24 - 26

Projects which increase the flexibility of conveying water and would be beneficial to the ecosystem could be excluded by this option because such projects may involve increasing conveyance capacity. This option could inhibit the DSC from meeting the coequal goals of water supply and ecosystem improvement.

Page 50, lines 27 - 29

Clarification of this complex sentence is needed.

<u>Statewide Storage and Conveyance</u>

Page 50, lines 31 - 32

The first sentence oversimplifies the design and use of multi-purpose reservoirs.

Page 50, lines 32 & 33

Contrary to the statement made, the State Water Project was "originally designed to protect ecosystem values." This can be seen on Page 18 of DWR Bulletin 160-66, *Implementation of the California Water Plan* (DWR, 3/66) where the text indicates that the SWP was designed to improve conditions for fish and wildlife, and improve water quality. On Page 64 of that report it states, "to leave for future generations as much of the natural heritage of the State as possible, it is important that fish and wildlife resources be preserved and enhanced."

Page 50, lines 35 - 36

The first sentence is unclear. Should the word 'match' be changed? Also, the word 'pumped' should be changed to 'exported from the Delta.'

Page 51, lines 4 - 6

The issue is not that SWP operates the lowest elevation dams; it's that the watersheds behind those dams are at lower elevations. These watersheds are particularly vulnerable to the impacts of a warming climate. As such, SWP dam operations will have to adapt to the impacts more than USBR dam operations.

Page 51, line 5

Also note that the SWP has only one reservoir (Oroville Reservoir) that captures water supply from the Sierras. Since the SWP and CVP are both very vulnerable to changes that may result from climate change, the Department recommends replacing this sentence with "The State Water Project and the Central Valley Project both rely on reservoirs which capture precipitation and snow melt from the Sierras and both export this water supply from the Delta. Both systems are very vulnerable to these changes."

Reporting and Transparency

Page 51, Lines 31 - 34

The Department suggests the following revisions to this paragraph:

Despite the importance of improving water supply reliability to the state and its economy, California has limited information on which to base sound water management decisions. California's water information infrastructure has not kept pace with the today's complex water problems. A large amount of information is needed not only to analyze water demands and supplies, but also to evaluate

ecosystem restoration options, adapt to long-term climate change, and implement integrated regional water and flood management solutions (California Water Plan Update 2009). Due to the lack of comprehensive and standardized monitoring and reporting requirements, the state does not know how much water is available or used on a real time basis. This is particularly true for groundwater extraction, which is unregulated in many areas of the state. The California Water Plan has identified the following categories where important information is not available or difficult to compile for many areas of the state:

- Statewide land use—native vegetation, urban footprints, nonirrigated and irrigated agriculture
- Groundwater total natural recharge, subsurface inflow and outflow, recharge of applied water, extractions, groundwater levels, pumping-induced land subsidence, and water quality
- Surface water—natural and incidental runoff, local diversions, return flows, total stream flows, conveyance seepage and evaporation, runoff to salt sinks, and water quality
- Consumptive use—evaporation and evapotranspiration from native vegetation, wetlands, urban runoff, and nonirrigated agricultural production
- Soil moisture characteristics—water saturation, porosities, and field capacities
- Environmental/biological data—species monitoring and their habitat and water requirements
- Land elevations and channel bathymetry
- Current and future price of water by supply source

Page 51, lines 36 - 42

The Department recommends the following language starting on line 36:

"…over-allocated (State Water Resources Control Board 2008b). In other regions of the state, water is pumped more quickly out of the ground than it is replenished (Department of Water Resources 2009). Chronic groundwater overdraft has been estimated by the Department of Water Resources to be as high as 2 million acre-feet statewide. This overdraft is mostly in Tulare Lake Hydrologic Region. A recent NASA study using data from the Gravity Recovery and Climate Experiment (GRACE) satellite mission further suggests that 16.5 million acre-feet were taken out of groundwater storage in the Central Valley between October 2003 and March 2010 (Famiglietti et al. 2011.) Again, the groundwater depletion was mostly in Tulare Lake Hydrologic Region."

(*Note: DWR defines groundwater overdraft as the condition of a groundwater basin in which the amount of water withdrawn by pumping exceeds the amount of water that recharges the basin over a period of years, during which the water supply conditions approximate average conditions. To calculate overdraft, the average annual*

change in groundwater storage must be calculated over an extended period that includes a varied hydrologic regime, in order to approximate average conditions.)

Page 52, lines 13-15

The Department suggests the following revisions to the text in lines 13 to 15:

But even mandatory sources of local and regional water supply and use data, such as the Urban Water Management Plans that urban retail and wholesale water agencies (serving more than 3,000 customers) are required to update and submit to the Department of Water Resources every 5 years, do not use consistent and transparent assumptions nor are they compiled electronically in a central data base. The information from these plans is important, but it is extremely time consuming or impossible to aggregate information from individual plans within a region to evaluate regional water conservation and local water supply development trends that will contribute to the improvement of the state's overall water supply reliability.

Page 52, lines 16 - 20

Contrary to the statements provided here, the CEQA process does provide an early, detailed public notice of the SWP water transfers. Public negotiations are also a part of the process for permanent water transfers. Also, the Monterey EIR is intended to and does provide a transparent process for DWR water supply contract amendments.

Page 52, line 17

Please add "or the use of SWP facilities" after "State Water Project" at the end of this sentence.

WR R5, Page 52, lines 35 – 45

The Delta Plan states the information collected through the Water PIE should be published in the California State Water Plan Update every five years. Consider modifying this to state "a summary of the information collected" since there is a considerable amount of data collected.

Groundwater

Page 53, lines 2 through 3

Please add (Department of Water Resources 2009) to the citation list with (Hanak et. al. 2011.)

Page 53, lines 3 - 6

Please note that groundwater is managed at the local level, generally the groundwater basin or subbasin, and the degree of management and reliability of the resource varies throughout the state.

Page 53, lines 9 - 12

Please add that there are currently 22 adjudicated groundwater basins in California.

Page 53, line 23

Please add “for groundwater elevation data” after first reporting deadline.

Page 53; lines 24 through 25 and lines 30 - 31

Please use the term ‘decline in groundwater storage’ rather than ‘overdraft.’

Page 53; lines 34 - 38

Please revise this section to note that the state has not conducted a comprehensive assessment of California’s groundwater basins using field data since **Bulletin 118-Update 2003** and that this was **published in 2003— eight years ago**.

Page 54, line 2

Include the Central Valley Project along with the State Water Project in this line.

WR R6, page 54, lines 10 – 15

Text should be re-written to apply only if adequate funding is provided.

WR R8, Page 54, lines 26 – 31

The DSC may also want to consider approaches different from having SWRCB taking action as described. An additional recommended approach could be to work with locals and follow a systematic path to effective local management.

Performance Measures

Page 54, line 33

To be consistent with the rest of this draft, the line should read “Improved Regional Self-Reliance” rather than Improved Regional Self- Sufficiency.

Chapter 5 Restore the Delta Ecosystem

Ecosystem Restoration

Page 63, lines 13 - 19

Text from two sources is quoted without citations, citations need to be provided.

Page 64, lines 18 - 21

Does the phrase *“changing amounts of rain and snow*” refer to total precipitation amount or to the ratio of rain to snow (i.e., that more precipitation falling as rain than snow at the lower elevations)? This statement needs more clarification.

Improving Habitat

ER P2, page 66, lines 42 - 45

DSC needs to clearly summarize what contents from those sections of the Draft DFG report need to be addressed. As is, it would fail the CEQA test for incorporating by reference. Also, consider adding the phrase “or subsequent updates” to the end of this sentence.

ER P2, page 66, lines 42-45 and page 67, lines 1-5

The figures referred to are not readily accessible for review. For the purposes of this plan consider adding Figure 4, “Land Elevations in the Delta Ecological Management Zone” and adding Figure 5, “Map of Ecological Management Units within the Delta Ecological Management Zone” These figures are on pages 35 and 47 of the *Draft Ecosystem Restoration Program’s Conservation Strategy for Stage 2 Implementation for the Sacramento-San Joaquin Delta Ecological Management Zone* (Draft ERPCS) to the Delta Plan. Please include the accompanying text also.

ER P4, page 67, lines 23 - 26

As written, this is an overly strict regulation, which must be tempered by feasibility and practicability.

ER P4, page 67, lines 27 – 30

In the comments to the second staff draft of the Delta Plan, the Department asked for a clarification regarding what was meant by the term “where feasible”. The third staff draft of the Delta Plan removed the phrase “where feasible” and simply required the evaluation and incorporation of alternatives that would increase the extent of floodplain and riparian habitats. The Delta Plan should include a note that these alternatives may not always be incorporated. Consider using the language in the Draft 2 Delta Plan, with a clarification of the term ‘feasible.’

Recommendations

ER R1, page 67, line 39

The phrase “and its watershed” should be placed after “the Delta.”

ER R1, page 67, lines 39 - 44 and page 68, lines 1- 2

Please include Dutch Slough and Meins landing in this list of important habitat restoration projects. Also, the project referred to as Cosumnes River/Mokelumne River Confluence; is this the same projects as the North Delta Flood Control and Ecosystem Restoration Project?

ER R2, page 68, lines 9 – 10

This recommendation discusses “Payment in Lieu of Taxes” to replace lost local government revenues resulting from the removal of properties from property tax rolls for ecosystem restoration or water supply purposes. This may be contrary to State policy and this potential change in State policy and how it may affect any lands the State holds should be evaluated before “Payment in Lieu of Taxes” is included in the public draft(s) of the Delta Plan.

ER P6, page 68, lines 38 - 40

Some actions may be neutral with respect to non-native invasive species. For example, a levee rehabilitation project that increases the erosion protection on a levee

would be neutral. How would compliance with this policy be demonstrated? The Department recommends that a sentence or wording be added to this policy that compliance does not need to be demonstrated for projects that are neutral to invasive species.

Reducing Threats and Stresses

ER R3, page 69, line 6

Consider adding the phrase “or subsequent updates” to the end of the sentence.

ER R3, page 69, lines 2 - 7

The language recommends that the California Department of Fish and Game (DFG) fully implement the list of potential Stage 2 Actions for Non-Native Species. Please note that many of these projects are being developed by a consortium of agencies and not just DFG. Since this is simply a list of potential actions, DFG should carefully considered and prioritize implementation of these actions and fully implement all of these actions.

ER R5, page 69, lines 28 - 33

This recommendation states that the Council will proceed with the ecosystem and conveyance planning independent of the BDCP process if the BDCP process is not complete by 31 December 2014. This action should be consistent with ER R3 and ER R4 listed above.

Page 70, line 30 - 36 and page 71, lines 1 - 8

Habitat and Migratory Corridor Performance Measures

While it is important to develop performance measures for this topic, the list of performance measures is too broad, appears somewhat redundant in scope, and is not measureable as written. There needs to be an effort made in this plan to match these measures with the objectives of the Act using a logical and hierarchical framework. There has been considerable work on this topic that could be referenced (see CALFED ERP literature, Environmental Protection Indicators for California (EPIC), The Bay Institute Scorecard, and other sources).

Chapter 6 Improve Water Quality to Protect Human Health and the Environment

Page 77, lines 4 & 5

The Department recommends the insertion of a new paragraph between lines 4 & 5 as follows:

> "Many aspects of the Delta are defined, protected, or preserved by the levee system. Water quality, human health and the environment in the Delta are all affected by the levee system. These levees limit tidal excursion and tidal volume to prevent degradation of water quality. These same levees prevent flooding of farm lands, homes and terrestrial habitat. The Delta levees are critical to many aspects of the Delta. This is especially true for water quality as discussed in this chapter."

Page 77, lines 9 – 26

No mention is made of municipal and industrial wastewater effluents in this section.

Page 77, line 10

The Department recommends inserting "the Delta levee system" after "in-Delta water and land uses."

Page 81, line 2

The term "all water users" needs to be defined. Does this mean individuals? What size water agency would this be applicable to?

Page 81, line30

Please add "if complied with" after regulatory process.

Page 82, line 31

Please clarify how "salinity variability" is a performance measure.

Chapter 7 Reduce Risk to People, Property, and State Interests in the Delta

General Comment

Investments in flood management should be accompanied with appropriate land use restrictions to reduce risks to people, property, and state interests to appropriate levels. Improving Delta levee flood protection to urban standards, particularly in the primary zone, could remove an obstacle to growth and significantly increase risks to more people, property, and state interests. Additionally, projects that induce growth may necessitate additional CEQA documentation and therefore additional costs. Strengthening legislation barring or limiting new development in the primary zone of the Delta (as an inappropriate land use) would allow investment in flood protection levees without increasing risks to people, property, and state interests. Consider the following:

- Discuss the importance of zoning restrictions, particularly in the primary zone.
- Consider including recommendations to planning agencies to halt future development projects in vulnerable areas of the Delta, including the primary zone.
- Consider adding a recommendation for legislative action to add stronger zoning restrictions in the Delta.

Introduction

Page 87, line 32

Please change “will” to “may” at the end of this line.

Page 88, lines 2 - 5

The text implies that risk awareness, emergency planning and enforcement of flood management regulations will solve the flood problems of the Delta. Please note in the text that physical repair, improvements and rehabilitation of levees will be necessary.

Page 88, lines 6 – 8

This sentence should also refer to the individual island levee improvement plans, funded by DWR through the Delta Special Projects Program.

Page 88, line 8

Please use the title: “Long Term Management Strategy for Dredging and Dredge Material Placement”. Another option is to use the title: “Reuse or Delta Dredged Sediment Long-Term Management Strategy” to be consistent with RR R2 on page 89. Either title would be correct.

RR P2, page 89, lines 3 – 5

The draft Delta Plan states existing or potential value of floodways shall not be encroached upon nor diminished without mitigating for potential or future flood flows, except as provided in this Delta Plan. Would work on the landside of levees be considered as work in a potential floodway? Please clarify.

Page 90, lines 29 – 30

The draft Delta Plan states that FEMA 100-year protection means that communities will not require mandatory purchase of flood insurance. However, this may conflict with other recommendations in the Delta Plan (see comment regarding page 94, lines 28-29 below.) This should be noted in the Delta Plan, for clarity and consistency.

Page 88, lines 14 - 20

The Corps of Engineers and Congress have a role in defining floodways. (See the authorizations for the Sacramento River Flood Control Project.)

Page 88, lines 36 - 37

Vegetation can also encroach in the floodway and pose a problem and needs to be specifically addressed. The plan should also discuss the Corps vegetation policy and how that might affect the Plan.

RR P2, page 89, lines 3 - 5

The policy should be written to only apply to encroachments that adversely affect the conveyance of flood flows, and not apply to all encroachments. As written, it would apply to habitat restoration on the water side of levees.

RR P2, page 89, lines 14 - 20

Water Code Section 9613 requires DWR and the Central Valley Flood Protection Board (CVFPB) to investigate and evaluate a San Joaquin bypass; it does not require implementation.

RR R2, page 89, lines 26 - 31

The Corps efforts in dredging are focused on navigation dredging for the Stockton and Sacramento Ports; ship navigation is not addressed elsewhere in the Plan. There is currently little if any dredging for flood control.

Delta Levee Design Criteria

Page 90, lines 13 – 14

The text should refer to "FEMA grants" and "Corps rehabilitation."

Page 90, lines 32 - 39

The text should acknowledge that the State 200-year standard is still under development as part of the development of the Central Valley Flood Protection Plan (CVFPP). In line 36, the words "an urban and urbanizing" should be deleted. (SB 5 applies to all parts of the Valley, whether urban or rural, albeit with different levels of required flood protection (200 vs 100 year protection.)

RR P4, page 91, lines 8 - 10

Consider changing the word "Actions" to "Covered Actions" at the beginning of both sentences. Also, the citation to the Government Code should include Sections 65962 and 66474.5.

This policy requires actions to conform to the levee classifications listed in Table 7-1 by 1 January 2015. There likely will not be the resources nor the time available to improve levees to the Class 3 and Class 4 standards listed in Table 7-1 since there are rural residential uses of most Delta islands. As written, this policy could preclude all covered actions such as road construction. This policy could even stop interim levee rehabilitation projects (such as a landside berm) being constructed that, ironically, are meant to meet the design criteria of Table 7-1. The Department recommends that the direction of this policy limit putting more people at risk rather than limiting all covered actions.

Page 91, Table 7-1

Many islands have tiny residential areas surrounded by mostly agricultural land, and are protected by HMP and/or PL 84-99 levees. The State, through the Department, currently contributes financially to upgrade levees to meet HMP and PL 84-99 standards on islands both with and without residential areas. This improves the protection provided to these areas, although not to the level of FEMA standards. The

recommendations associated with Table 7-1 could substantially reduce the Department's work to improve the stability of levees in the Delta, since costs to improve levees beyond PL 84-99 reduces the levee miles that can be completed with the existing funds.

Clarify the 'Rural Residential' header in Table 7-1 under 'Land Use' to be "Rural Residential – areas not meeting the definition of urbanizing areas."

Consider altering Table 7-1 to acknowledge that residents live in areas protected by levees that do not meet PL 84-99 standards and upgrading these levees to PL 84-99 can reduce the level of flood risk.

Please use standard definitions of rural, urbanizing, and urban to specify the conditions for which an area is considered residential, commercial, or industrial (e.g., minimum populations) with the understanding that more areas requiring FEMA 200-year levees means greater costs and fewer levee miles rehabilitated for a given sum of money.

Consider adding a footnote that allows projects that upgrade levees to a PL 84-99 standard on islands with residential/commercial/industrial areas as a first step to improve the protection provided by the island.

Page 91, Table 7-1

Under Class 2 (footnote (b)) - Dozens of islands in the primary zone of the Delta do not meet HMP standards, although they have residents and infrastructure of statewide interest. Upgrading to HMP improves protection for these islands. The Department has considered upgrading to HMP to be a priority as a step to improve the protection provided to an island. Consider allowing projects that upgrade levees to HMP on islands with statewide interests if a higher level of protection is not cost-effective according to the cost/benefit analysis (if required).

Page 91, Table 7-1

Under Class 5 – The minimum design criteria should include consideration of seismic design for "frequently loaded" levees as defined in the Urban Levee Design Criteria.

Page 91, Table 7-1

Please clarify the term "rural residential." Is one residence "rural residential?"

Page 91, Table 7-1

Please note that there are special "Delta Specific Standards" for PL 84-99.

Page 91, Table 7-1

Please clarify the meaning of the footnote regarding legacy towns.

Page 91, Table 7-1, footnote d

This footnote should refer to DWR rather than Natural Resources Agency and FEMA.

RR P5, page 92, lines 1 - 4

This policy erroneously suggests that the Department is developing criteria to define locations of future setback levees. This concept may be better written as a recommendation rather than a policy and state that until the Delta Conservancy's strategic plan is completed and specific locations identified, potential locations of setback levees along major river corridors will be preserved.

Flood Management Investment

Page 92, line 10

The text should also include the Federal government through the U.S. Army Corps of Engineers.

Page 92, lines 26 – 27

The statement that the state has no clear policy for flood management and state funding within the Delta is not accurate. Proposition 1E contains state flood policy, SB 5 (2007) contains state flood policy, and the CVFPP will contain State flood policy on levee investments. Moreover, the Department has spent a significant effort developing guidelines and a draft framework for state investments in Delta levees. (See: http://www.water.ca.gov/floodmgmt/dsmo/bdlb/spp/near_term_guidelines.cfm)

RR P6, Page 92, line 30

Do all levee improvements in the Delta need to reduce risk of loss of life? This could mean that the Department could no longer invest in Delta levees where there are no residences, as these investments do not reduce risk of loss of life. This could impact levee improvement projects for ecosystem enhancement.

RR P6, page 92, lines 32 - 36

Please consider adding “Duration of flooding” to this list of conditions.

Page 93, line 2

Emergency preparedness is not the first line of defense from floods, especially in the Delta where levees continually hold back water and protect from floods. The Department recommends that this introductory line be re-written to “Even with the best engineered levees, channels, and flood ways, there will always remain a residual risk from flooding. Therefore, it is imperative…”

RR R3, page 93, lines 33 - 36

The text states that the Department should allow a large number of agencies access to emergency stockpiles. In the event of an emergency, the Department must maintain control over disbursement of these materials. The Department recommends language stating this and clarify that this material is to be used by Delta levee maintaining agencies in accordance with Department plans and procedures.

Page 93, lines 26- 40

The Department recommends that an addition be made:

“All personnel prepared to respond to Delta flood emergencies should be trained in the Statewide Emergency Management System (SEMS) and the National Incident Management System (NIMS) procedures. All emergency response plans and emergency response training exercises involving the Delta should be SEMS and NIMS-compliant.”

Limitation of Liability

Page 94, line 6

Delete “any kind for” and replace with “tort”; this does not cover inverse condemnation liability.

Page 94, lines 15 - 17

Consider mentioning the judgment against CalTrans in that case.

RR R5, page 94, lines 28 - 29

The Draft Delta Plan recommends the Legislature require flood insurance for communities in floodprone area. The term floodprone needs to be defined.

Also, the following should be added to the sentence: " . . . and should specify that any insurance proceeds shall be an offset to any recovery from the State or local government, regardless of the basis of liability against those entities."

Financing of Local Flood Management Activities

Problem Statement, page 94, lines 37 - 38

The Department disagrees that financing of local levee operations, maintenance and related data collection is not well coordinated. The Department has engaged in the successful Subventions and Special Flood Control Projects programs for over 20 years assisting the local Delta reclamation districts in levee maintenance and rehabilitation projects. The Department has coordinated financing, maintenance, and data collection through these programs.

RR R6, page 95, lines 1 -19

The creation of a Delta Flood Management Assessment District is recommended in this section of the Delta Plan. It appears that this assessment district would be authorized to conduct many of the same functions that the Department is authorized to conduct under the Water Code. The Department cautions against duplicative efforts. The DSC must weigh the benefits against the costs of establishing another district in the Delta. An important concept related to this would be the potential ability to establish a consistent source of funding for levee rehabilitation in the Delta. However, the creation of a new assessment district may not necessarily be the best option. This recommendation is still relatively ambiguous and a more complete description of the roles and responsibilities of this assessment district needs to be provided in the plan.

The parenthetical phrase in the first sentence should include "local government, public utility facilities, including railroads, and mineral rights owners" to make this recommendation more clear.

RR R7, page 95, lines 36 - 38

The sentence should include at the end: " . . . if and when available."

RR R8, page 96, lines 12 - 14

Please refer to the ongoing efforts by the Department, then National Weather Service California-Nevada River Forecast Center (CNRFC) and the US Army Corps of Engineers (USACE) to improve flood operation coordination among Central Valley reservoirs through DWR's Forecast-Coordinated Operations program. This ongoing program will consider appropriate operations control strategies in due course with appropriate attention to the limits of scope and authority the respective regulations allow.

The text should be changed to read: " . . . should evaluate and modify, to the extent feasible and when funding is available, . . ."

Chapter 8 Protect and Enhance the Unique Cultural, Recreation, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place.

General Comment

In contrast to an earlier draft, there appears to be less discussion on importance of Delta agriculture, and efforts to ensure its sustainability.

Also, some of the policies and recommendations in Chapter 8 (particularly those related to legacy towns in the Primary Zone) may be in direct conflict with some of the policies/recommendations in Chapter 7 (particularly any growth-inducing effects of investments in levees protecting legacy towns.) Note that the Delta Protection Act of 1992 allows these communities to grow in accordance with "special area plans" adopted by the Counties. These plans are subject to CEQA review for growth-inducing impacts, transportation issues, and other impacts. The issue of "economic sustainability of legacy towns" is a complex issue. By allowing legacy towns to grow (in order to sustain schools, postal services, and other services) increases flood risk and consequences. This is a prime example of where the Council will need to be clear about how conflicting "non-co-equal goal" policies and recommendations will be prioritized.

To illustrate this further, if the Clarksburg community plan approved by Yolo County allowed for a 3% annual growth rate, this would result in a development of approximately 40-50 residential units. This would have been more acceptable in accordance with the Delta Protection Act than the 160 units proposed for the original Sugar Mill development project. The DSC must consider how a proposal to allow an increase of 40-50 housing units would be treated by the Council in light of its mandate to accommodate economic sustainability of legacy towns while not increasing flood risk.

Land Use and Resource Management

Page 102, lines 1, 2, & 12 - 14

This statement is no longer accurate. According to a California Department of Food and Agriculture (CDF&A) official, this plan was completed in February and has been submitted by CDF&A to the Council. The report is available at http://aic.ucdavis.edu/publications/AIC_Delta_study_final.pdf.

Problem Statement

Page 103, lines 19 - 21

The text states that "urbanization adjacent to the Delta and within the Secondary Zone may adversely affect resources" in the Secondary Zone. Please make note that this will adversely affect resources in the Primary Zone as well.

DP R5, page 103, line 28

The creation of a Delta Flood Management Assessment District is again recommended in this section of the plan. Please refer to the Department comments on RR R6 above.

Chapter 9 Finance Plan Framework to Support Coequal Goals

General Comment

The second staff draft of the Delta Plan included estimates of the cost to improve levees to PL 84-99. The Department requested that this estimate be updated to reflect the costs of the proposed requirements, which include upgrading levees that protect residential areas to FEMA-100 year standards and higher. The third staff draft of the Delta Plan removed the estimates contained in the second draft Delta Plan, but did not replace them with newer cost estimates. If the Delta Plan requires upgrading levees to these more stringent standards, it should identify the costs associated with these requirements. Please include an estimate of the costs to upgrade Delta levees to meet the requirements of the Delta Plan.

Page 107, line 18

The key tenents raise the important principle that beneficiaries should pay for benefits they receive and stressors should pay for the stresses they place on the ecosystem. This principle is repeated several times in Chapter 9. In addition, Page 116, line 29 describes seven types of possible stressor fees. While it may be premature

to specifically identify the beneficiaries and stressors in this document and the amount each should pay, it would be very helpful if the document proposed an approach or plan to achieve this important end result.

Guiding Principles

Page 108; General comment

Consider including Co-equal goals under Guiding Principles and a description of how co-equal goals will be quantified for funding purposes. Also, consider adding coordination and integration (where practical) with other state finance plans to identify cumulative impacts, avoid conflicting state policy and minimize confusion for decision-makers. Finally, consider adding "Economic Efficiency", "Cost-effectiveness" and/or other accountability-related principles.

Page 108, lines 15 - 18

The intended message seems to be that development of beneficiary pays and user fees should occur soon, before implementation of projects begins, but the text is unclear.

Background

Page 109, lines 1 - 5

This implies some rough magnitudes of annual funding necessary for unspecified Delta-related programs. A more recent and more specific range of potential funding needs should be created. An alternative is a caveat that "historical expenditures are not an indication of future needs".

Page 109, line 14

The Department recommends adding "existing bond funds are nearing depletion" to this statement.

Immediate Needs

Page 110, lines 15 & 16

The text states “Science funding is likely to be more than 50 percent of the needs for oversight on an ongoing basis.” This statement is unclear.

Bay Delta Conservation Plan Costs and Existing Funding Sources

Page 110, line 29

This section could be more helpful to the reader if the approximate anticipated costs of the co-equal goals, as described in the December 2010 “Highlights of BDCP”, were presented graphically.

Attached at the end of this document is a chart showing the capital costs of BDCP. As seen in the chart, the anticipated $16.3 billion of capital costs associated with BDCP are split between the co-equal goals – water supply and ecosystem restoration. The costs associated with water supply ($13 billion) will be funded by the State and Federal Water Contractors under the Delta Habitat Conservation and Conveyance Program (DHCCP). Costs associated with ecosystem restoration ($3.3 billion) will be funded by a mix of beneficiaries and stressors, as mentioned in the subject document. Operations and maintenance costs should also be added. (Presenting numbers in this way may be more illustrative to the readers than showing numbers down to the dollar as seen in Table 9-2, page 111.)

Recommended Financing Strategy for the Delta Plan

Page 111, line 14

The statement "In general human activities ..." appears to be a guiding principle. However, it is unclear how this statement relates to the next sentence, "Large federal and State contribution should be secondary." Is the message actually that impacts from local activities warrant a greater local cost burden than federal or State activities?

Immediate Funding Recommendations

Page 111, line 18 General Comment

This section appears to be a mix of recommendations and recommendations with proposed levels of funding, yet the title of the section “Immediate Funding Recommendations” suggests the reader will see a proposed level of funding for each recommendation. You may wish to re-title the section or add a proposed level of funding to each recommendation.

FP R2, page 111, line 26

The Department recommends the phrase, “that cross the Delta”, should be changed to “that cross or lie within the Delta.”

FP R3, page 112, lines 10 – 13

The cost of $10 million to "develop a benefit assessment plan for the Delta" seems high.

The benefit assessment flood management agency recommended under GP R1 for the Delta is a very complex subject and must consider all of the various benefits the Delta provides to the State of California. The DSC should describe in detail what this agency's function would be and how the agency would be organized and explore more fully the feasibility and benefits of this proposal.

FP R7, page 112, line 33

Whenever a specific amount is selected for the "unified budget", the text should make clear whether that amount is an annual expenditure, or the total expenditure over the specified ten year period.

Near Term Funding Recommendations

FP R10, page 113, line 2

The Department recommends that the word "modest" should be placed before "public goods charge."

Funding Sources

Page 113, General comments

Consider including private placement bonds, private investment, and an infrastructure bank concept alternative under funding sources.

User Charges for Water

Page 114, line 9

The phrase "Water agencies generate revenue by selling water," should be changed to "Most water agencies generate most of their revenue by selling water." Some water agencies receive all of their revenues from property taxes or per acre charges. Many water agencies receive at least some of their revenues from such taxes or charges.

Page 114, lines 16 & 17

The Department is unclear what the phrase “Allowing reallocation of resources among users may be required …” means. Is this effectively referring to a "subsidy" of some sort?

Cost Efficiencies

Page 114, lines 30 - 33

Cost savings associated with actions or policies is more of a planning approach/consideration than finance as it speaks to what is selected for implementation as opposed to how it is funded.

Diversion Fees

Page 115, lines 38 & 39

The statement “The costs of standardized measurement could be significant relative to the amount of fees collected” needs some clarification. SBX7-7 requires agricultural water suppliers which serve more than 10,000 acres to “measure the volume of water delivered to customers with sufficient accuracy …” The costs to measure water diversions to or by agricultural water purveyors, as a percentage of the total value of that water, would be far less than the relative costs to measure the water delivered to individual farms, as called for by SBX7-7.

So, the only water “diversion fees” that would have to be assessed to individual farms would be fees on riparian diversions by such farms. However, those fees can be collected based on estimated water use. Such estimates could be produced through the use of land use data (number of irrigated acres, types of crops grown, location of the farm, and so on) combined with DWR’s acre-foot per acre estimates of net water use. These estimates have been developed for all the significant crops or crop groups grown in each of the State’s ten hydrologic regions.

Other Stressor Fees

Page 116, line 33

Land use charges will be difficult to quantify since every land use (including ‘natural habitat’) places stress on some aspect of the environment.

Page 116, line 34

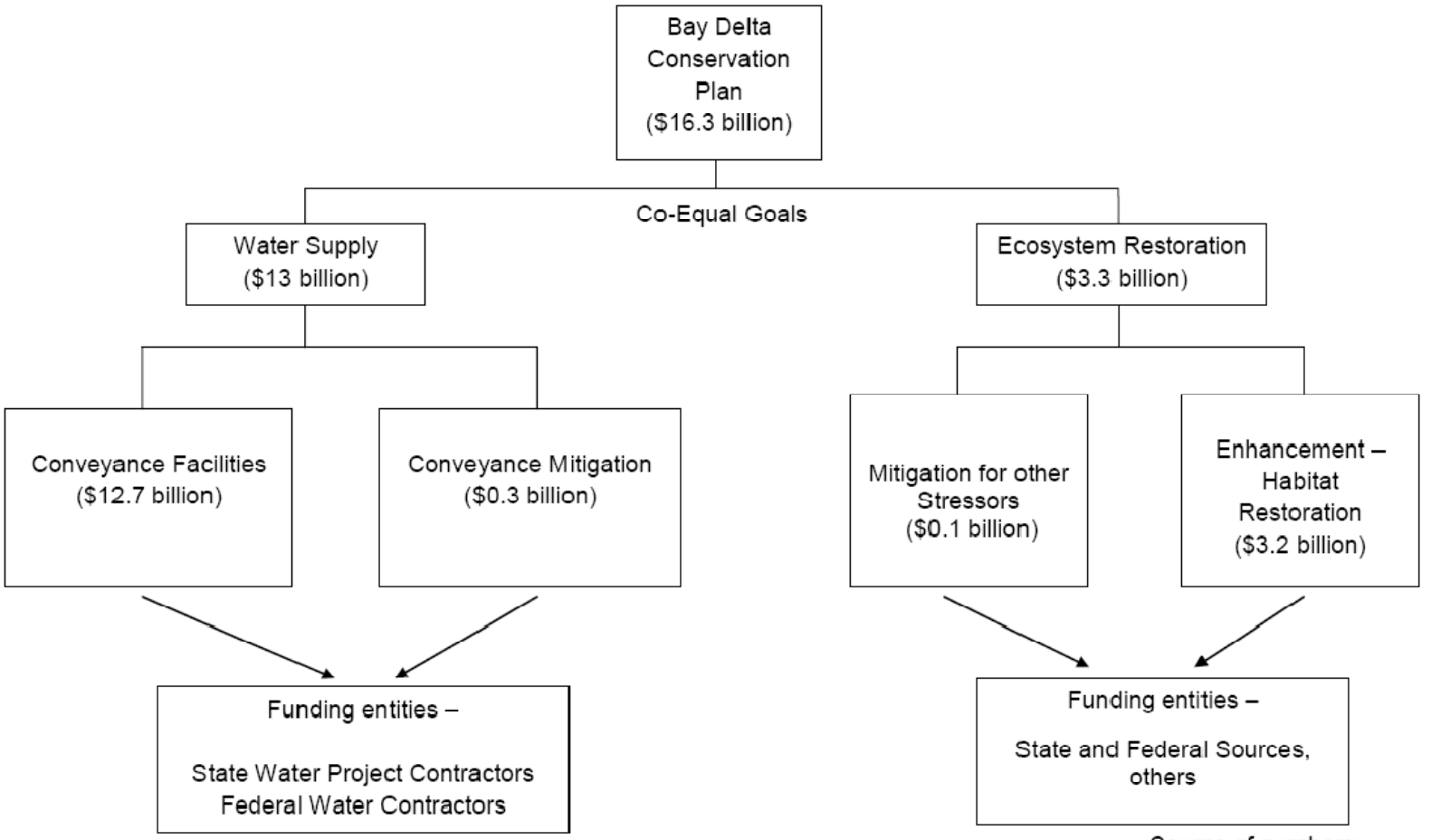
Will this new “retail sales fee” be assessed only in the Delta or throughout the Delta watershed or the entire State?

Public Good Charges

Page 118, line 3

The Department recommends the phrase “public good charge” be changed to “public goods charge for water.”

Bay Delta Conservation Plan – Capital Costs / Funding Entities



Source of numbers:
"Highlights of BDCP", page 62-63
December 2010